

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
TITUS MCBRIDE,

Plaintiff,

-against-

Detective ALBERT VELEZ, Shield No. 4287; Detective
DAVID MISCHO, Shield No. 19611; and CITY OF NEW
YORK,

Defendants.
-----X

**DECLARATION OF
MELISSA H. KIM IN
SUPPORT OF
DEFENDANT DAVID
MISCHO'S MOTION TO
DISMISS THE AMENDED
COMPLAINT PURSUANT
TO FEDERAL RULE OF
CIVIL PROCEDURE
12(B)(6)**

15 Civ. 3203 (CM)

MELISSA H. KIM declares, pursuant to 28 U.S.C. § 1746, under penalty of perjury,
that the following is true and correct:

1. I am an Assistant Corporation Counsel in the Office of Zachary W. Carter,
Corporation Counsel of the City of New York, and the attorney assigned to the defense of this
matter. As such, I am familiar with the facts and circumstances stated herein.

2. I submit this declaration in support Defendant Mischo's Motion to Dismiss the
Amended Complaint Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure dated
May 12, 2017.

3. Annexed hereto as Exhibit "A" is a true and correct copy of the Amended
Complaint in this action, which sets forth, among other things, that on or about April 21, 2015 at
4:45 a.m. when plaintiff answered the door, a detective said that they wanted to ask him some
questions, and plaintiff partly opened the door and the officers forced their way into his home;
and that he was detained by the officers until 6:00 am when three more detectives entered his
home allegedly without a search warrant; and that he was subsequently arrested.

4. Annexed hereto as Exhibit “B” is a true and correct copy of the Certificate of Disposition, which sets forth, among other things, that plaintiff was convicted of the criminal charges stemming from plaintiff’s April 22, 2017 arrest, including Burglary in the Third Degree.

5. Annexed hereto as Exhibit “C” is a true and correct copy of Plaintiff’s Arrest Report, #M14635759, issued by the New York City Police Department, which sets forth, among other things, that plaintiff was arrested for Burglary in the Third Degree.

6. Annexed hereto as Exhibit “D” is a true and correct copy of the Search Warrant dated April 22, 2014, which sets forth, among other things, that there is reasonable cause for the Court to believe certain property may be found in “Apartment Marked 7EN Inside of 900 Grand Concourse, Bronx New York, 10451” and authorized entry and search of the target premises.

7. Annexed hereto as Exhibit “E” is a true and correct copy of a transcript of the pretrial hearing held on or about December 8, 2016 in connection with plaintiff’s criminal case underlying the incident, which sets forth, among other things, that the Court credited the testimony of Detective Mischo after plaintiff had a full and fair opportunity to question him; that the first entry was lawful based on consent of the non-party owner of the residence; that based on the observations in plain view upon this lawful entry, there was probable cause to obtain a search warrant; that the second entry was lawful based on the execution of a valid search warrant; and that there was probable cause to arrest plaintiff.

Dated: New York, New York
May 12, 2017

ZACHARY W. CARTER
Corporation Counsel for the
City of New York
Attorney for Defendant Detective David Mischo
100 Church Street, Room 3-209
New York, New York 10007
(212) 356-2375

By: /s/
MELISSA H. KIM
Assistant Corporation Counsel
Special Federal Litigation Division

TO: VIA FIRST-CLASS MAIL
Titus McBride
349-14-05784
R.N.D.C.
11-11 Hazen Street
East Elmhurst, NY 11370

Titus McBride
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Sing Sing Correctional Facility
354 Hunter St.
Ossining, NY 10562

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Detective ALBERT VELEZ, Shield No. 4287; Detective DAVID MISCHO, Shield No. 19611; and
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Defendants.

**DECLARATION OF MELISSA KIM IN SUPPORT OF DEFENDANT DETECTIVE MISCHO'S
MOTION TO DISMISS THE AMENDED COMPLAINT
PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 12(B)(6)**

ZACHARY W. CARTER

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Attorney for Defendant Detective David Mischo
100 Church Street
New York, N.Y. 10007*

*Of Counsel: Melissa H. Kim
Tel: (212) 356-2375*